2SHB 2514 - S COMM AMD

By Committee on Natural Resources, Ocean & Recreation

ADOPTED 03/06/2008

1 Strike everything after the enacting clause and insert the 2 following:

"NEW SECTION. Sec. 1. The legislature finds that the resident population of orca whales in Washington waters (Orcinus orca), commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals.

NEW SECTION. Sec. 2. A new section is added to chapter 77.15 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, it is 1 2 unlawful to:

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- (a) Approach, by any means, within three hundred feet of a southern resident orca whale (Orcinus orca);
- (b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;
- (c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;
- (d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or
- (e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.
 - (2) A person is exempt from subsection (1) of this section where:
- (a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;
- (b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;
- (c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or
- That person is acting pursuant to and consistent with authorization from a state or federal government agency.
- (3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.
- (4) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sail boats.
- 37 (5) A violation of this section is a natural resource infraction 38 punishable under chapter 7.84 RCW.

NEW SECTION. Sec. 3. The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW.

6 <u>NEW SECTION.</u> **Sec. 4.** A new section is added to chapter 77.12 RCW 7 to read as follows:

The department and the state parks and recreation commission shall disseminate information about section 2 of this act, whale and wildlife viewing guidelines, and other responsible wildlife viewing messages to educate Washington's citizens on how to reduce the risk of disturbing southern resident orca whales. The department and the state parks and recreation commission must, at minimum, disseminate this information on their internet sites and through appropriate agency publications, brochures, and other information sources. The department and the state parks and recreation commission shall also attempt to reach the state's boating community by coordinating with appropriate state and nongovernmental entities to provide this information at marinas, boat shows, boat dealers, during boating safety training courses, and in conjunction with vessel registration or licensing.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

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On page 1, line 2 of the title, after "vessels;" strike the remainder of the title and insert "adding a new section to chapter 77.15 RCW; adding a new section to chapter 77.12 RCW; creating new sections; and prescribing penalties."

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